

*** PUBLIC VERSION ***

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZACKARY ELLIS SANDERS,

Defendant.

Case No. 1:20-cr-00143

Honorable T.S. Ellis, III

Sentencing: April 1, 2022

**THIRD SUPPLEMENT TO MR. SANDERS’S MOTION FOR A NEW TRIAL
AND TO RECONSIDER MOTIONS TO COMPEL AND MOTIONS TO SUPPRESS**

Zackary Ellis Sanders, by and through undersigned counsel, respectfully submits this third supplement to his Motion for a New Trial and to Reconsider Motions to Compel and Motions to Suppress (ECF No. 585), which was filed on March 14, 2022. This supplement is submitted to assist the Court with respect to understanding accurately the significance of the Canadian Report to Crown Council (“RCC”) (ECF No. 592-1) regarding Tyler David Walker, which was submitted by the defense to the Court on March 17, 2022.

The RCC sets forth a factual narrative directly relevant to one of the central issues underlying Mr. Sanders’s Motion: Whether the United States was engaged in a joint venture with international partners in an operation involving the warrantless use of a Network Investigative Technique (“NIT”) against Mr. Sanders’s computer. On that issue, the RCC underscores the direct and close collaboration between United States law enforcement (including Department of Homeland Security Homeland Security Investigations (“HSI”)) and other countries in the operation to de-anonymize IP addresses used to visit target websites, including the one in this case (██████████) using an NIT.

The RCC establishes that on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The arrest was conducted by [REDACTED].¹

[REDACTED]

[REDACTED]

¹ The main law enforcement agent involved in the arrest of Faulkner and Falte and in this operation generally is HSI Special Agent Gregory Squire. Agent Squire has a long history and background working on large-scale operations involving child pornography. *See, e.g., United States v. Thomas S. Clark*, Case No. 2:21-MJ-00147-JLW (W.D. Wash., March 11, 2021) (Complaint) (“*Clark Complaint*”) (ECF No. 586-4 at ¶ 8) (“According to the foreign law enforcement agency and *HSI Special Agent Greg Squire* who observed the TARGET WEBSITE while it was operational, child pornography images and videos were trafficked through the TARGET WEBSITE via the posting of web links within forum messages,” which makes clear he was the source information about the target website) (emphasis added); *United States v. Paul Bateman*, Case No. 1:20-cr-10012-IT (D. Mass, Dec. 27, 2021) (“*Bateman Motion*”) (ECF No. 586-6 at 1-3) (identifying HSI Special Agent Gregory Squire as the affiant of the search warrant affidavit); *see also ICE Special Agent in Boston receives national recognition in child rescue case*, U.S. Immigration and Customs Enforcement (May 20, 2011), available from <https://www.ice.gov/news/releases/ice-special-agent-boston-receives-national-recognition-child-rescue-case> (last accessed Mar. 31, 2022) (In 2011, “ICE *HSI special agent Greg Squire* and three others, including the Assistant U.S. Attorney for the Eastern District of North Carolina, were nominated for the honors by the U.S. Attorney’s Office for their extraordinary work in an ‘outstanding multi-agency operation.’ The efforts led to the rescue of a six-year-old child exploitation victim and successful prosecution of the sex offender.”) (emphasis added). His involvement in the [REDACTED]

[REDACTED]; (3) Agent Squire is the law enforcement agent assigned to other cases arising from the same operation, including *United States v. Paul Bateman*, Case No. 1:20-cr-10012-IT (D. Mass, Dec. 27, 2021) (“*Bateman Motion*”) (ECF No. 586-6 at 1-3), a case the defense has cited to in its prior submissions to the Court. *See Bateman Motion* (ECF No. 586-6) at 1-3).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; Alistair Walsh, *Norwegian newspaper reveals Australian police ran child porn site Childs Play for 11 months*, DW (Aug. 10, 2017), available from

<https://www.dw.com/en/norwegian-newspaper-reveals-australian-police-ran-child-porn-site-childs-play-for-11-months/a-40865610> (last accessed Mar. 31, 2022) (“News Article”), attached as Ex. 1, at 1-2 (“Canadian Benjamin Faulkner and American Patrick Falte, who met up to rape the four-year-old girl in Virginia and who were accused of running the sites Childs Play and Giftbox, were sentenced to life in prison for the Virginia abuse. Their involvement in the darknet sites was still to come before the courts.”).

The RCC also reflects [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Indeed, Australian law enforcement operated Child's Play for another 11 months, until investigative journalists from the Norwegian publication *Verdens Gang* uncovered the operation and confronted the Australian government regarding its continued operation of a child pornography website. *See id.* at 1-2.

The RCC is clear, however, that Child's Play and Gift Box Exchange were not the only websites that [REDACTED].

To the contrary, the [REDACTED]

[REDACTED]. This is the target website, [REDACTED] This new TOR website was created and operated by [REDACTED], as well as [REDACTED]

[REDACTED]. *See, e.g.,* [REDACTED] News Story 3 (ECF No. 476-3) at 4 (noting that Walker was

[REDACTED]);

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the close cooperation between American law

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The fact that the United

³

[REDACTED]

States was the source of those access credentials strongly bolsters Mr. Sanders's position that the operation was a "joint venture," such that the actions of the FLA working with the United States were subject to the Fourth Amendment. Indeed, the FLA tip regarding Mr. Sanders's IP address *would not have been possible* absent HSI's provision of the [REDACTED] credentials to the FLA.

Because law enforcement did not obtain a warrant in the United States for the seizure of Mr. Sanders's IP address, the Court should grant Mr. Sanders's motions for a new trial and to compel, and all evidence located as a result of the invalid warrant should be suppressed as seized in violation of the Fourth Amendment to the United States Constitution.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March 2022, the foregoing was served electronically on the counsel of record through the US District Court for the Eastern District of Virginia Electronic Document Filing System (ECF) and the document is available on the ECF system.

/s/ Jonathan Jeffress

Jonathan Jeffress